SOUTH CAROLINA

LONG TERM CARE

OMBUDSMAN

PROGRAM

Annual Report
Fiscal Year 2005

South Carolina Lt. Governor's Office on Aging
Long Term Care Ombudsman Program
1301 Gervais St., Suite 200
Columbia, SC 29201

Regional Ombudsman Offices:

Region 1: Appalachia
Greenville, SC
Phone: 864 -242-9733
Serving: Anderson, Cherokee, Greenville,
Oconee, Pickens, and Spartanburg
1-800-434-4036 (outside Greenville County)

Region 2: Upper Savannah
Greenwood, SC
Phone: 864-941-8070
Serving: Abbeville, Edgefield, Greenwood, Laurens, McCormick, and Saluda
1-800-922-7729 (outside Greenwood County)

Region 3: Catawba - York, SC
Phone: 803-329-9670
Serving: Chester, Lancaster, York, and Union
1-800-662-8330 (outside York County)

Region 4: Central Midlands
Columbia, SC
Phone: 803-376-5389
Serving: Fairfield, Lexington, Newberry, and Richland
1-866-394-4166 (outside Richland County)

Region 5: Lower Savannah
Aiken, SC
Phone: 803-649-7981
Serving: Aiken, Allendale, Bamberg, Barnwell, Calhoun, and Orangeburg
1-866-845-1550 (outside Aiken County)

Region 6: Santee-Lynches
Sumter, SC
Phone: 803-775-7381
Serving: Clarendon, Kershaw, Lee and Sumter
1-800-948-1042 (outside Sumter County)

Region 7: Pee Dee
Hartsville, SC
Phone: 843-383-8632
Serving: Chesterfield, Darlington, Dillon, Florence, Marion, and Marlboro
1-866-505-3331 (outside Darlington County)

Region 8: Waccamaw
Georgetown, SC
Phone: 843-546-4231
Serving Georgetown, Horry and Williamsburg
1-888-302-7550 (outside Georgetown County)

Region 9: Trident
Charleston, SC
Phone: 843-554-2280
Serving: Berkeley, Charleston and Dorchester
1-800-864-6446 (outside Charleston County)

Region 10: Lowcountry
Yemassee, SC
Phone: 843-726-5536
Serving: Beaufort, Colleton, Hampton, and Jasper
1-877-846-8148 (outside Jasper County)

State Long Term Care Ombudsman's Office
Lt. Governor's Office on Aging
1301 Gervais St., Suite 200
Columbia, SC 29201
Phone: 803-734-9900
1-800-868-9095 (outside Richland County)

THE PURPOSE of the Long Term Care Ombudsman Program is to improve the quality of life and quality of care of all residents in long-term care facilities in South Carolina.

Residents in long term care facilities are often physically and emotionally vulnerable, facing daily challenges in pursuing a meaningful quality of life. Whenever problems arise, residents or families can call upon an ombudsman for help. Ombudsmen receive complaints about long-term care services and then voice the residents' concerns to nursing homes, residential care facilities, and other providers of long-term care.

Experience has shown that when residents and families understand the long-term care system, they are able to effectively act on their own behalf when problems occur. By educating residents, families and facility staff, the Ombudsman Program fosters an understanding and knowledge of the long-term care system.

The Ombudsman Program is governed by the federal Older Americans Act and by the South Carolina Omnibus Adult Protection Act.

The Lt. Governor's Office on Aging administers the statewide program through ten (10) regional offices located throughout the state. These programs are located within Area Agencies on Aging and funded with federal, as well as state and local dollars. There is no charge for services provided by the Ombudsman Program.

1 ADVOCACY

The Older Americans Act requires every state, through its Office On Aging, to create a statewide Long Term Care Ombudsman Program (LTCOP) to investigate and resolve "complaints made by or on behalf of older individuals who are residents of long term care facilities." Facilities include all nursing homes and residential care facilities. However, the S.C. Omnibus Adult Protection Act (OAPA) [S C Code ann. 43-35-5 et seq.] also mandates that the S.C. ombudsman program investigate or cause to be investigated abuse, neglect, and exploitation complaints in psychiatric hospitals and facilities operated or contracted for operation by the State Department of Mental Health (DMH) and the South Carolina Department of Disabilities and Special Needs (DDSN).

OAPA requires certain persons to report abuse or to report situations where they may have reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited. ***A vulnerable adult is a person who is eighteen years of age or older and who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection***. This includes a person who may be elderly, or who is physically, mentally or emotionally disabled and unable to provide for his or her care or protection. A resident of a facility is considered to be a vulnerable adult. Abuse occurring in a licensed facility is reported to the Long Term Care Ombudsman's Office. Abuse occurring in all other locations in the community is reported to the Department of Social Services – Adult Protective Services.

The S.C. ombudsman program is composed of a State Long Term Care Ombudsman operating within the Lt. Governor's Office on Aging, and ten (10) Regional Long Term Care Ombudsman Programs with Fifteen (15) full-time ombudsmen that operate within the Area Agencies on Aging (AAA).

The term "ombudsman" includes an employee or volunteer who represents an AAA designated under section 712(a)(5)(A) of the Older Americans Act and who has been designated by the State Long Term Care Ombudsman.

It should be noted here that the Ombudsman Program is not a regulatory agency and has no enforcement authority. Its main functions are to investigate complaints for prompt referral to regulatory, law enforcement, or prosecutorial authorities and to engage in public activity to educate, inform and advocate for the rights of residents in long term care facilities. Regulatory agencies license facilities and survey facilities' ability to meet the needs of residents. Law enforcement organizations and solicitors and the Attorney General's Office further develop and process criminal actions.

Currently the Ombudsman program is responsible for investigating more than 1,371 facilities in South Carolina. These include approximately 706 long-term care facilities where the ombudsman must investigate complaints according to the Older Americans Act. Of these long-term care facilities, 195 are nursing homes and 508 are residential care facilities. As stated previously, the S.C. Omnibus Adult Protection Act (OAPA) also mandates that the LTCOP investigate complaints in psychiatric hospitals, and facilities operated or contracted for operation by the Department of Mental Health (DMH) and the Department of Disabilities and Special Needs (DDSN). This is approximately 639 additional facilities operated by DDSN including 130 Intermediate Care Facilities (ICF/MR) and the 509 Community Training Homes (CTH II). The Department or Mental Health has an additional nine (9) Inpatient Facilities and seventeen (17) Community Mental Health Centers.

Under the authority of the OAPA, the LTCOP developed a Memorandum of Agreement (MOA) which authorized DMH and DDSN and their contractors to receive reports and conduct internal investigations of all cases of alleged abuse, neglect and exploitation of vulnerable adults occurring in their facilities. The MOA was necessary

due to the limited number of ombudsman investigators and the lack of OAA funding to support the ombudsman program. All completed investigations are forward to the LTCOP for review. The LTCOP also conducts independent investigations if requested by the resident or responsible party or if it is deemed necessary by the LTCOP.

The major objectives of the MOA are to assist the LTCOP in its responsibility to receive reports and investigate allegations in facilities operated or contracted for operation by DMH and DDSN by (1) independently reviewing investigations conducted by DMH, DDSN and their contractors; (2) conducting independent and/or joint investigations when deemed appropriate; and (3) referring verified cases to law enforcement for investigation and prosecution. DMH and DDSN are mandated to comply with OAPA by establishing an effective system for reporting and investigating allegations of abuse, neglect and exploitation of vulnerable adults and by informing all Departmental and contractor employees of their legal responsibility to report under the law.

Other Ombudsman Activities

The Long Term Care Ombudsman is responsible for assuring that individuals receive quality care and fair treatment. Ombudsmen act as the eyes and ears for residents and encourage access to advocacy by letting residents know what kind of care to expect, by providing a mechanism to file a complaint, and by guiding residents through the process of advocating on their own behalf.

Following are other services provided by ombudsmen:

Investigates and resolves complaints made by or on behalf of residents;

Informs residents about services provided by long-term care providers, public agencies, health and social service agencies or other services to assist in protecting their health, safety, welfare, and rights;

Provides regular and timely access to ombudsman services for residents and timely responses to complaints;

Analyzes, comments on, and monitors the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions pertaining to the health, safety, welfare and rights of residents;

Provides support for the development of resident and family councils in facilities;

Prohibits inappropriate disclosure of the identity of any complainant or resident with respect to Long Term Care Ombudsman files or records;

Educates the community about the needs of long-term care residents;

Coordinates efforts with other agencies concerning with long-term care;

Makes friendly visits to long-term care facilities to talk to residents and monitor conditions; and

Provides training and educates facility staff about resident rights and other long-term care issues.

In 2004, state and regional ombudsman staff provided the following trainings and consultations to individuals and facilities:

- 64 Trainings to Facility Staff
- 584 Consultations to Facilities
- 869 Consultations to Individuals
- 533 Friendly Visits to Facilities
- 30 Trainings to Resident and Family Councils
- 62 Community Training Sessions

2 *OMBUDSMAN ACCESS TO RECORDS*

The Health Insurance Portability and Accountability Act (HIPAA) and the accompanying "Standards for Privacy of Individually Identifiable Health Information" (Privacy Rule), whose compliance date was April 14, 2003, addresses the confidentiality and accessibility of personal health information.

Under the Privacy Rule, a "health oversight agency" is given special access to medical records. A covered entity must disclose protected health information to a "health oversight agency" for oversight activities authorized by law, such as audits, investigations, inspections, licensure, proceedings, and other activities necessary for oversight.

The Administration on Aging has determined that representatives of the Long Term Care Ombudsman Program are health oversight agencies because they have oversight responsibilities authorized by law for a component of the health care system. Therefore, the HIPAA privacy rule does not preclude release of residents' clinical records or relevant information relating to facility operations to the LTCOP, with or without authorization of the resident or the resident's legal representative. In other words, Federal laws have **not changed** the access LTCOP representatives have in reference to resident records or access to other information about residents.

Consumer Access to Records

The HIPAA privacy regulation also guarantees consumers the right to inspect, obtain a copy of, and amend their own medical records and restricts when and how "covered entities" that maintain medical records may use and disclose protected health information. Under the HIPAA privacy rule, "covered entities" have deadlines for responding to requests for medical records.

3 *OMBUDSMAN COMPLAINTS*

Complaint investigations are the primary responsibility of the Long Term Care Ombudsman Program. Ombudsmen work closely with residents, families and facility staff to offer guidance and resolve substantiated complaints. In federal fiscal year 2003-2004, the ombudsmen program received 5,251 complaints involving residents in long-term care facilities. As stated previously, the ombudsman program is also responsible for investigating complaints in psychiatric hospitals and facilities operated or contracted for operation by the State Department of Mental Health and the Department of Disabilities and Special Needs. Of the 5,251 complaints, 2,892 were from nursing homes, 1,654 were from residential care facilities, and 705 were from other facilities.

Often a single complaint affects more than one resident. For example complaints regarding lack of staff to assist with meals could affect a single resident or the entire facility depending on the circumstances. Also, a case may have more than one complaint. For instance, a resident may voice a complaint about the length of time it takes for staff to answer call lights and the poor attitude of staff when complaints are lodged.

Cases, Complainants and Complaints

Complaints are received from many sources, although most complaints are reported by the facility. This figure is particularly high in South Carolina because under the S.C. Omnibus Adult Protection Act, facilities must report all suspected cases of abuse, neglect, and exploitation to the Long Term Care Ombudsman, while in most other states, these complaints are reported to the regulatory agency or Adult Protective Services.

A. Total number of cases opened during reporting period.

3,820

B. The number of cases closed, by type of facility, which were received from the types of complainants as listed below.

Cases	Nursing Homes	Residential Care Facilities	Other Settings
Resident	107	97	67
Relative	450	167	38
Guardian	9	4	4
Ombudsman	82	115	121
Facility	1,192	263	338
Medical Staff	66	75	20
Other Agency	39	88	27
Anonymous	83	94	12
Other	0	0	0

C. Total number of cases closed during this reporting period.

3,558

D. Each particular case may have more than one complaint. For the cases opened during this reporting period, the following is the total number of complaints received:

5,251

Residents accounted for approximately five (5) percent of the complaints called in to the ombudsman's office, and families accounted for approximately eighteen (18) percent of the complaints. Even though complaints are confidential as required by federal and state law, about four (4) percent of the complainants prefer to remain anonymous, citing

fear of retaliation as the most common cause. The ombudsman program continues to educate callers regarding their protection from retaliation as specified in state law.

Types of Complaints by Facility

The table below illustrates the complaints received in the 133 different categories made by or on behalf of long term care facility residents.

As indicated, the most frequent complaints received statewide are improper handling, accidents, physical abuse, verbal abuse and neglect . The Ombudsman Program is very concerned and encourages the nursing home industry to address these issues.

Complaint Categories **Number of Complaints**

	Residents Rights	**Nursing Homes**	**RCFs**
	Abuse, Neglect, Exploitation		
1	Abuse, physical	303	111
2	Abuse, sexual	23	23
3	Abuse, verbal	192	64
4	Financial exploitation	42	33
5	Gross Neglect	128	68
6	Resident-to-resident physical or sexual abuse	46	24
7	Other abuse, neglect, or exploitation	0	0
	Access to Information by Resident		
8	Access to own records	4	3
9	Access to ombudsmen/visitors	1	3
10	Access to facility survey	0	0
11	Information regarding advance directives	8	2
12	Information regarding medical conditions	22	17
13	Information regarding rights, benefits	88	37
14	Information communicated in understandable Language	1	0

15	Other – Specify	1	1
	Admission, Transfer, Discharge, Eviction		
16	Admission contract/procedure	5	5
17	Appeal process	2	0
18	Bed hold – written notice, refusal to readmit	8	1
19	Discharge/eviction	132	80
20	Discrimination in admission due to condition	5	2
21	Discrimination in admission	6	1
22	Room assignment/room change	6	2
23	Other	3	3
	Autonomy, Choice, Preference, Rights		
24	Choose personal physician, pharmacy	3	2
25	Confinement in facility against will	0	12
26	Dignity, respect, staff attitudes	101	49
27	Exercise preference/choice and rights	26	13
28	Exercise right to refuse treatment	3	3
29	Language barrier in daily routine	0	2
30	Participate in care planning	3	0
31	Privacy-telephone, visitors	11	16
32	Privacy in treatment	8	3
33	Response to complaints	8	6
34	Reprisal, retaliation	8	12
35	Other	1	2
	Financial, property (except for financial exploitation)		
36	Billing charges – notice, approval, wrong	19	17
37	Personal funds – access/information denied	23	45
38	Personal property lost, stolen, used by others	62	31
39	Other	0	1
	Resident Care		
40	Accidents, improper handling	571	71
41	Call lights, response for assistance	39	4
42	Care plan/resident assessment	66	42
43	Contracture	1	1

44	Medication errors	88	113
45	Personal hygiene	55	45
46	Physician services	17	12
47	Pressure sores	46	9
48	Symptoms unattended	92	54
49	Toileting, incontinent care	24	10
50	Tubes – neglect of catheter, NG tube	6	2
51	Wandering, failure to accommodate/monitor	33	26
52	Other	3	1
	Rehabilitation or Maintenance of Function		
53	Assistive devices or equipment	11	4
54	Bowel and bladder training	0	0
55	Dental Services	3	1
56	Mental health	2	4
57	Range of motion/ambulation	3	0
58	Therapies – physical, occupational, speech	12	0
59	Vision and hearing	3	2
60	Other	0	0
	Restraints – Chemical and Physical		
61	Physical restraint	10	4
62	Psychoactive drugs	0	0
63	Other	0	0
	Activities and Social Services		
64	Activities	9	12
65	Community interaction/transportation	2	6
66	Roommate conflict	40	15
67	Social services	1	0
68	Other	0	2
	Dietary		
69	Assistance in eating or assistive devices	35	8
70	Fluid availability/hydration	21	9
71	Menu/food service – quantity, quality	25	54
72	Snacks, time span between meals	3	9
73	Temperature	4	2

74	Therapeutic diet	5	2
75	Weight loss due to inadequate nutrition	10	7
76	Other	0	6
	Environment		
77	Air/environment	12	19
78	Cleanliness, pests, general housekeeping	13	34
79	Equipment/buildings – disrepair, hazard	19	27
80	Furnishings, storage for residents	1	6
81	Infection control	5	9
82	Laundry – lost, condition, damaged	4	7
83	Odors	7	10
84	Space for activities, dining	0	1
85	Supplies and linens	5	18
86	Other	0	3
	Policies, Procedures, Attitudes, Resources		
87	Abuse investigation/reporting	5	2
88	Administrator(s) unresponsive, unavailable	3	9
89	Grievance procedure	1	0
90	Inadequate record keeping	8	6
91	Insufficient funds to operate	0	1
92	Operator inadequately trained	0	1
93	Offering inappropriate level of care	0	23
94	Resident or family council not supported	2	0
95	Other	66	90
	Staffing		
96	Communication, language barrier	0	0
97	Shortage of staff	36	22
98	Staff training, lack of screening	7	22
99	Staff turnover	3	6
100	Staff unresponsive, unavailable	20	27
101	Supervision	11	8
102	Other	0	1
	Problems With Outside Agency		
	Certification/licensing agency		

103	Access to information	0	1
104	Complaint, response to	0	0
105	Decertification/closure	1	1
106	Intermediate sanctions	0	0
107	Survey process	0	0
108	Survey process – ombudsman participation	0	0
109	Transfer or eviction hearing	0	2
110	Other	0	0
	State Medicaid Agency		
111	Access to information, application	1	0
112	Denial of eligibility	2	1
113	Non-covered services	1	0
114	Personal needs allowance	0	1
115	Services	0	1
116	Other	0	0
	Systems/Others		
117	Abuse/neglect/abandonment by family	14	6
118	Bed shortage, placement, lack of alternative	13	4
119	Board and care regulations	1	1
120	Family conflict, interference	25	13
121	Financial exploitation or neglect by family	37	21
122	Legal – guardianship issue	20	7
123	Medicare	0	0
124	PASARR	0	0
125	Resident’s physician not available	0	0
126	Protective Service Agency	2	1
127	SSA, SSI, VA, Other benefits	3	0
128	Other, including request for less restrictive placement	0	1
	Complaints about services in settings other than long-term care facilities		
129	Home care	0	0
130	Hospital or Hospice	0	0
131	Public or other congregate housing	0	0

132	Services from outside provider	0	0
133	Other Complaints	0	0

Total Nursing Home Complaints **2,892**

Total Residential Care Facility Complaints **1,654**

Total Complaints from other Facilities **705**

Ombudsman Complaint Activity

Ombudsmen are active in problem solving within long-term care facilities, and instrumental in the resolution of complaints. The goal of the program is the resolution of problems within a facility, encouraging communication of concerns by residents and their representatives to the administration, and providing mediation or negotiation of solutions.

Action on Complaints	NH	RCF	OTHER
1. Verified	1,416	798	333
2. Required Regulation Change	10	21	3
3. Complaint Not Resolved	45	37	0
4. Complaint Withdrawn	86	33	3
5. Referred, No Final Report	143	185	65
6. Referred, Agency Failed to Act	43	14	4
7. No Action Needed	164	106	17
8. Complaint Partially Resolved	99	108	8
9. Complaint Resolved to Satisfaction	2,302	1,150	605
Total Complaints	2,892	1,654	705

4 *LONG TERM CARE FACILITY INFORMATION*

The following table illustrates the number of long-term-care facilities in South Carolina in 2003. Many individuals live in long-term care facilities due to the lack of publicly-funded home care that would allow them the opportunity to live at home with additional assistance.

FY 2004	Number of Facilities	Number of Beds
Nursing Homes	195	18,947
ICF/MR (<15 Beds)	120	966
ICF/MR (>15 Beds)	10	1,278
Residential Care Facilities	508	16,602
Total Facilities	833	37,793

Throughout the healthcare field in the United States, organizations are facing an acute shortage of nursing staff. However, nursing homes in South Carolina are required to maintain a minimum number of staff.

Nursing Home Staff

The required minimum number of licensed nurses for any nursing station which serves at least one resident is one per station per shift. If a nursing station serves more than forty-four (44) residents, then that station is required to have two licensed nurses on all shifts.

Nursing Aides

The required number of nursing aides and other non-licensed nursing personnel is determined by the number of residents assigned to beds at each nursing station. Non-licensed nursing staff must be provided to meet at least the following schedule:

Shift	Ratio of Aides to Residents
1	1:9
2	1:13

3	1:22

For the purposes of this section:
"Shift 1" means a work shift that occurs primarily during the daytime hours including, but not limited to: a 7:00 a.m. to 3:00 p.m. shift;
"Shift 2" means a work shift that generally includes both daytime and evening hours including, but not limited to, a 3:00 p.m. to 11:00 p.m. shift;
"Shift 3" means a work shift that occurs primarily during the nighttime hours including, but not limited to, an 11:00 p.m. to 7:00 a.m. shift.
Note: **This staff must be dedicated strictly to direct resident care, e.g., no cooking, housekeeping or administrative duties. A nursing home with 8 residents would require a minimum of 3 staff persons on the day shift, i.e., one administrator, one DON who must be an RN and one aide.**

Residential Care Facility Staff

The required minimum number of residential care facility staff is 1staff to 8 residents during peak hours (7:00 a.m. to 7:00 p.m. or defined by facility). One staff to 30 residents is required during non-peak hours. If the building houses more than 8 residents, a staff member must be awake and dressed during non-peak hours. The Department of Health Licensing may require additional personnel if client needs require.

5 *PROTECTION AND THE LAW*

South Carolina Omnibus Adult Protection Act

Abuse, neglect, or exploitation of nursing home residents is a crime which the law treats very seriously. South Carolina has very strong laws and penalties for crimes committed against a vulnerable adult. A vulnerable adult means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. A resident of a facility is a vulnerable adult.

Abuse, Neglect, and Exploitation

There are many causes for elder abuse in long-term care facilities. These residents are particularly vulnerable because of their frail and dependent position. The Ombudsman Program views elder abuse as a priority, and works to stop any and all elder abuse.

"*Physical abuse*" means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement.

"*Psychological abuse***"** means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

"*Neglect***"** means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated

conduct or a single incident which results in serious physical or psychological harm or substantial risk of death.

"*Exploitation***"** means an improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage or that person or another person. Exploitation can also mean causing or requiring a vulnerable adult to engage in activity or labor which is improper, illegal, or against the reasonable and rational wishes of the vulnerable adult.

Signs of Abuse

Many nursing home residents are totally dependent on caregivers. When a resident is abused or neglected by a caregiver, that resident may be afraid to complain for fear of reprisal. It is especially important that others watch for warning signs, such as:

- Frequent unexplained injuries or complaints of pain without obvious injury
- Bruises or burns suggesting the use of instruments, cigarettes, etc.
- Cuts, scratches, skin tears, swelling
- Passive, withdrawn and emotionless behavior
- Lack of reaction to pain
- Fear of being alone with caregivers
- Injuries that appear after the person has not been seen for several days

Signs of Neglect

- Obvious malnutrition, dehydration
- Lack of personal cleanliness
- Begs for food, loss of weight, withdrawn
- Untreated bedsores, unexplained rashes
- Odorous, lying in urine, feces or old food

Signs of Exploitation

- Sudden inability to buy personal care items
- A sudden transfer of funds or property
- Excessive activity in the bank accounts or credit cards
- Sudden changes in wills, powers of attorney or guardianship

Penalties

A person who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and willfully fails to report the incident is guilty of a misdemeanor and, upon conviction must be fined not more that $2,500 or imprisoned not more than one year.

A person who knowingly and willfully abuses a vulnerable adult is guilty of a felony and, upon conviction, may be imprisoned not more than five years.

A person who knowingly and willfully neglects a vulnerable adult is guilty of a felony and, upon conviction, may be imprisoned not more than five years.

A person who knowingly and willfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than $5,000 or imprisoned not more than five years, or both, and may be required to make restitution.

A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, may be imprisoned not more than fifteen years.

A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, may be imprisoned not more than thirty years.

A person who threatens, intimidates, or attempts to intimidate a vulnerable adult, a witness, or any other person cooperating with an investigation, is guilty of a misdemeanor and, upon conviction, must be fined not more than $5,000 or imprisoned for not more than three years.

A person who willfully and knowingly obstructs or in any way impedes an investigation, upon conviction, is guilty of a misdemeanor and must be fined not more than $5,000 or imprisoned for not more than three years.

Reporting Abuse, Neglect and Exploitation

Nursing home employees are required by law to report suspected abuse, neglect, and exploitation.

Incidents must be reported within twenty-four hours or the next business day. The report must be made in writing or orally by telephone to the Long Term Care Ombudsman Program for incidents occurring in facilities and to the Adult Protective Services Program for incidents occurring in all other settings in the community.

A person required to report or to investigate cases, and who has probable cause to believe that a vulnerable adult died as a result of abuse or neglect shall report the death and suspected cause of the death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner must report the investigative findings to law enforcement and the circuit solicitor in the appropriate jurisdiction. The Long Term Care Ombudsman Program and the Attorney General's Office work in conjunction to communicate effectively and avoid duplication of effort to investigate complaints of resident abuse, neglect, mistreatment, and financial exploitation in nursing homes and residential care facilities.

How to Stop Abuse

Many nursing homes provide quality care. However, even one case of abuse is too many. Everyone's assistance is needed to help spot abuse and report it. Professionals and concerned citizens must be alert to protect the elderly who are at risk. If you or anyone you know thinks you may have seen signs of abuse of a vulnerable adult, take action to help stop it. Call the Ombudsman Program if it occurred in a facility, the Department of Social Services, Adult Protective Services, if it occurred in the community, or your local law enforcement agency.

Preventing and Resolving Complaints

Facilities should be able to resolve many types of complaints before an unsatisfied person contacts the ombudsman's office. These are complaints that involve respect and dignity, personal possessions, food, communication with staff, personal privacy, etc. Most of these complaints are avoidable and are usually caused by poor communication between facilities and residents and family. Nursing homes and residential care facilities could prevent most complaints by:

- Treating all residents with respect and dignity.
- Having a procedure in place for reporting, investigating, and handling complaints.
- Building a relationship of trust and goodwill with the family.
- Always being prompt and thorough in researching and responding to resident concerns.
- Training all staff on customer service skills.
- Appointing a person in the facility to handle all complaints and provide assistance to the residents or family members in a timely manner.
- Maintaining a resident-friendly attitude, listen, and avoid being defensive.

6 *RESIDENT RIGHTS §44-81-10*

In South Carolina, residents of long term care facilities have legal rights to preserve their dignity and personal integrity and safeguard against encroachments upon each resident's need for self-determination. These rights are called the "Bill of Rights for Residents of Long Term Care Facilities".

The Right to be Fully Informed

Each resident or the resident's representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions as explained in this brochure before or at the time of admission to a long-term care facility. The resident or resident's representative's written acknowledgment of receipt of these explanations must be made a part of the resident's file**.**

Refund Policy

The facility must have a written policy on giving refunds to residents. The policy must be based on the actual number of days a resident is in the facility and any reasonable number of bed-hold days. Residents must be given a written copy of this policy and must be notified in writing of any change in services, charges, or the refund policy.

Medical Treatment

As a resident of a facility, the resident or their guardian has the right to:

- Choose a personal physician;
- Receive from their physician a complete and current description of their medical conditions in terms they can understand;
- Participate in the planning of their care and treatment;
- Be fully informed in advance of any changes to care/treatment that may affect the resident's well-being;
- Refuse to participate in any type of experimental tests or research;
- Have privacy during treatment;
- Have their medical records treated with confidentiality;

- Approve or refuse release of their medical records to anyone outside the facility, **unless** they are transferred to another facility, or it is required by law or other third party contracts.

Personal Possessions

The resident of a facility has the right to:

- Have security in storing their personal possessions;
- Approve or refuse release of their personal records to anyone outside the facility, except as provided by law;
- Keep and use personal clothing and possessions as long as they do not affect other resident's rights;
- Manage their personal finances.

Personal Treatment

The resident of a facility has the right to:

- Be treated with respect and dignity;
- Be free from mental or physical abuse;
- Be free from chemical or physical restraints unless ordered by a physician;
- Be free from working or performing services for a facility unless they are part of the plan of care;
- Be discharged/transferred to another facility against his/her wishes for: his/her welfare; the welfare of other residents; medical reasons; non-payment. If the resident is discharged or transferred, he/she must be given a written notice at least 30 days in advance, unless the discharge or transfer is for the resident's welfare or welfare of other residents.

Communication

The resident of a facility has the right to:

- Have family members, a legal guardian or other relatives visit;
- Refuse to see family members, legal guardian, or other relatives;
- Associate and communicate privately with persons of their choice;
- Meet with family members, their legal guardian, or other resident's family members to discuss the facility;

- Meet with and participate in social, religious, and community group activities, unless prohibited by a written medical order.

Personal Privacy

The resident of a facility has the right to:

- Privacy when receiving personal care;
- Have privacy for conjugal visits;
- Share a room with their spouse, unless the doctor states otherwise in the medical record;
- Have their personal records treated confidentially;
- Employ a sitter from outside the facility, unless there is a written agreement not to hire a private sitter. The sitter must be approved by the facility. The sitter must abide by the policies and procedures of the facility. You must also agree not to hold the facility liable for any matter involving the private sitter.